SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF RICHMOND

KATHERINE CAMMAYO, individually and on behalf of all others similarly situated,

Plaintiff,

-against-

1AND8, Inc. d/b/a MUSEUM OF ICE CREAM,

Defendant.

Index No. 150173/2024

ANSWER TO COMPLAINT

1and8, Inc. d/b/a Museum of Ice Cream ("Defendant"), by their attorneys, Sheppard Mullin Richter & Hampton LLP, hereby submit the following Answer to the Class Action Complaint (the "Complaint"). Defendant denies each and every allegation in the Complaint's section headings and in all portions of the Complaint's allegations not contained in numbered paragraphs.

ANSWER

1. The allegations of paragraph 1 state a legal conclusion to which no affirmative response is required. To the extent that a response is required, Defendant denies the allegations in paragraph 1 of the Complaint.

2. The allegations of paragraph 2 state a legal conclusion to which no affirmative response is required. To the extent that a response is required, Defendant denies the allegations in paragraph 2 of the Complaint.

3. The allegations of paragraph 3 state a legal conclusion to which no affirmative response is required. To the extent that a response is required, Defendant denies the allegations in paragraph 3 of the Complaint.

4. The allegations of paragraph 4 state a legal conclusion to which no affirmative response is required. To the extent that a response is required, Defendant denies the allegations in paragraph 4 of the Complaint.

5. The allegations of paragraph 5 state a legal conclusion to which no affirmative response is required. Answering further, Defendant does not contest subject matter jurisdiction.

6. The allegations of paragraph 6 state a legal conclusion to which no affirmative response is required. Answering further, Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 6.

7. The allegations of paragraph 7 state a legal conclusion to which no affirmative response is required. Answering further, Defendant does not contest personal jurisdiction.

8. Defendant denies that Plaintiff purchased three admission tickets to the Museum of Ice Cream NYC on October 29, 2023 through Defendant's website, https://www.museumoficecream.com, Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 8 of the Complaint.

9. Defendant admits that it is incorporated in Delaware. Defendant denies that its principal place of business is New York, New York, and further alleges that its wholly-owned subsidiary operates the Museum of Ice Cream NYC.

10. Defendant admits the allegations contained in paragraph 10 of the Complaint.

11. The allegations of paragraph 11 state a legal conclusion to which no affirmative response is required. Answering further, Defendant admits that "[a]fter a consumer selects "RESERVE VIP TICKETS" or the "RESERVE GENERAL ADMISSION TICKETS" button, she is taken to a screen which provides a list of various museum admission dates, times and ticket prices." Defendant denies the remaining allegations in paragraph 11 of the Complaint.

12. Defendant admits the allegations contained in paragraph 12 of the Complaint, except denies that "[t]he total cost of the ticket is also not displayed on this page."

13. Defendant denies the allegations contained in paragraph 13 of the Complaint.

14. Defendant admits that after a consumer inputs her personal and contact information, she is prompted with a set of boxes to check regarding marketing communications and Terms and Conditions, denies that "the total cost of the ticket is not displayed on this page either" and denies knowledge or information sufficient to form a belief as to "[f]or January 24, 2024 at 4:00 PM, the price of a "General Admission" ticket is displayed as $42.00 per person."

15. Defendant admits the allegations contained in paragraph 15 of the Complaint.

16. Defendant denies the allegations in paragraph 16 of the Complaint that "[o]n the right-side of the same screen, the "Total" ticket price is finally displayed, which includes $13.23 of "Taxes & Fees" and "[t]his is the first time Defendant makes explicit mention of additional 'fees.'" Defendant admits the remainder of the allegations in paragraph 16.

17. Defendant denies the allegations contained in paragraph 17 of the Complaint.

18. The allegations of paragraph 18 state a legal conclusion to which no affirmative response is required. To the extent that a response is required, Defendant denies the allegations in paragraph 18 of the Complaint.

19. The allegations of paragraph 19 state a legal conclusion to which no affirmative response is required. To the extent that a response is required, Defendant denies the allegations in paragraph 19 of the Complaint

20. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 20 of the Complaint.

21. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 21 of the Complaint.

22. The allegations of paragraph 22 state a legal conclusion to which no affirmative response is required. To the extent that a response is required, Defendant denies the allegations in paragraph 22 of the Complaint.

23. The allegations of paragraph 23 state a legal conclusion to which no affirmative response is required. To the extent that a response is required, Defendant denies the allegations in paragraph 23 of the Complaint.

24. Defendant denies that Plaintiff sustained any damages as a result of Defendant's conduct and denies that it failed to disclose the total cost of its tickets, including its service fees. The remaining allegations of paragraph 24 state a legal conclusion to which no affirmative response is required. To the extent that a response is required, Defendant denies the allegations in paragraph 24 of the Complaint.

25. The allegations of paragraph 25 state a legal conclusion to which no affirmative response is required. To the extent that a response is required, Defendant denies the allegations in paragraph 25 of the Complaint.

26. Defendant denies the allegations contained in paragraph 26 of the Complaint.

27. Defendant repeats the allegations contained in the foregoing paragraphs as if set forth fully herein.

28. The allegations of paragraph 28 state a legal conclusion to which no affirmative response is required. To the extent that a response is required, Defendant denies the allegations in paragraph 28 of the Complaint.

29. The allegations of paragraph 29 state a legal conclusion to which no affirmative response is required. To the extent that a response is required, Defendant denies the allegations in paragraph 29 of the Complaint.

30. Defendant denies that it violated the cited statute and denies that it failed to disclose the total cost of a ticket, inclusive of all ancillary fees that must be paid in order to purchase the ticket. The remaining allegations of paragraph 30 state a legal conclusion to which no affirmative response is required. To the extent that a response is required, Defendant denies the allegations in paragraph 30 of the Complaint.

31. The allegations of paragraph 31 state a legal conclusion to which no affirmative response is required. To the extent that a response is required, Defendant denies the allegations in paragraph 31 of the Complaint.

32. Defendant denies that it violated the cited statute and denies that it failed to disclose any fees. The remaining allegations of paragraph 32 state a legal conclusion to which no affirmative response is required. To the extent that a response is required, Defendant denies the allegations in paragraph 32 of the Complaint.

33. The allegations of paragraph 33 state a legal conclusion to which no affirmative response is required. To the extent that a response is required, Defendant denies the allegations in paragraph 33 of the Complaint.

34. Defendant denies that Plaintiff purchased tickets on Defendant's website, denies that Plaintiff was forced to pay Defendant's service fee, and denies that Plaintiff was harmed. The remaining allegations of paragraph 34 state a legal conclusion to which no affirmative response is required. To the extent that a response is required, Defendant denies the allegations in paragraph 34 of the Complaint.

35. The allegations of paragraph 35 state a legal conclusion to which no affirmative response is required. To the extent that a response is required, Defendant denies the allegations in paragraph 35 of the Complaint.

36. The allegations of paragraph 36 state a legal conclusion to which no affirmative response is required. To the extent that a response is required, Defendant denies the allegations in paragraph 36 of the Complaint.

AFFIRMATIVE DEFENSES

Without assuming the burden of proof where it rests on Plaintiff, Defendant alleges and avers the following separate and additional defenses to the Complaint:

First Defense

Each of Plaintiff's and the class members' claims or causes of action are barred, in whole or in part, for failure to state a claim upon which relief can be granted

Second Defense

Each of Plaintiff's and the class members' claims are barred in whole or in part by the doctrines of estoppel, waiver, unclean hands, release, ratification, discharge and laches.

Third Defense

Plaintiff and/or some or all members of the class lack standing to bring claims under New York Arts and Cultural Affairs Law § 25.07(4).

Fourth Defense

Neither Plaintiff nor any members of the class have suffered any actual damages.

Fifth Defense

Each of Plaintiff's and the class members' claims are barred in whole or in part for lack of injury.

Sixth Defense

Each of Plaintiff's and the class members' claims are barred in whole or in part for lack of deception.

Seventh Defense

Plaintiff does not state facts sufficient to certify a class pursuant to Article 9 of the New York Civil Practice Law and Rules.

Eighth Defense

There is lack of common issues of fact or law and, accordingly, this action is not properly brought as a class action.

Ninth Defense

Plaintiff is not a proper representative of the class she purports to represent and, accordingly, this action is not properly brought as a class action.

Tenth Defense

Plaintiff's claims are not typical of the class she purports to represent and, accordingly, this action is not properly brought as a class action.

Eleventh Defense

The purported class is not sufficiently numerous and, accordingly, this action is not properly brought as a class action.

Twelfth Defense

The class action procedure is not the superior method for adjudicating Plaintiff's claims or the claims of the purported class.

Thirteenth Defense

There is no private right of action to enforce the cited statute.

Reservation of Defenses

Defendant reserves the right to add, amend and/or supplement this Answer to assert those defenses which they deem necessary to its defense during of upon the conclusion of investigation and discovery.

PRAYER FOR RELIEF

WHEREFORE, Defendant seeks judgment against Plaintiff:

(a) Denying all relief sought by Plaintiff, including certifying any class pursuant to CPLR 901, and dismissing the Complaint it its entirety with prejudice;

(b) Awarding Defendant its costs and disbursements associated with this action, including reasonable attorneys' fees, to the maximum extent allowed by law; and

(c) Granting Defendant such other and further relief as this Court deems necessary.

Dated: March 13, 2024

SHEPPARD MULLIN RICHTER & HAMPTON LLP
Attorneys for Defendant

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